

HB 2340 - H AMD 806

By Representative Kirby

ADOPTED 02/11/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.146.005 and 1994 c 33 s 1 are each amended to read
4 as follows:

5 The legislature finds and declares that the brokering of
6 residential real estate loans substantially affects the public
7 interest. The practices of mortgage brokers and loan originators have
8 had significant impact on the citizens of the state and the banking and
9 real estate industries. It is the intent of the legislature to
10 establish a state system of licensure in addition to rules of practice
11 and conduct of mortgage brokers and loan originators to promote honesty
12 and fair dealing with citizens and to preserve public confidence in the
13 lending and real estate community.

14 **Sec. 2.** RCW 19.146.010 and 1997 c 106 s 1 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Affiliate" means any person who directly or indirectly through
19 one or more intermediaries, controls, or is controlled by, or is under
20 common control with another person.

21 (2) "Application" means the same as in Regulation X, Real Estate
22 Settlement Procedures, 24 C.F.R. Sec. 3500.

23 (3) "Borrower" means any person who consults with or retains a
24 mortgage broker or loan originator in an effort to obtain or seek
25 advice or information on obtaining or applying to obtain a residential
26 mortgage loan for himself, herself, or persons including himself or
27 herself, regardless of whether the person actually obtains such a loan.

28 ((+3)) (4) "Computer loan information systems" or "CLI system"
29 means ((the real estate mortgage financing information system defined

1 ~~by rule of the director)) a real estate mortgage financing information~~
2 ~~system that facilitates the provision of information to consumers by a~~
3 ~~mortgage broker, loan originator, lender, real estate agent, or other~~
4 ~~person regarding interest rates and other loan terms available from~~
5 ~~different lenders.~~

6 ~~((4))~~ (5) "Department" means the department of financial
7 institutions.

8 ~~((5))~~ (6) "Designated broker" means a natural person designated
9 ~~((by the applicant for a license or licensee)) as the person~~
10 ~~responsible for activities of the licensed mortgage broker in~~
11 ~~conducting the business of a mortgage broker under this chapter and who~~
12 meets the experience(~~(, education,)~~) and examination requirements set
13 forth in RCW 19.146.210(1)(e).

14 ~~((6))~~ (7) "Director" means the director of financial
15 institutions.

16 ~~((7))~~ (8) "Employee" means an individual who has an employment
17 relationship ~~((acknowledged by both the employee and the licensee))~~
18 ~~with a mortgage broker, and the individual is treated as an employee by~~
19 the ~~((licensee)) mortgage broker~~ for purposes of compliance with
20 federal income tax laws.

21 ~~((8))~~ (9) "Independent contractor" or "person who independently
22 contracts" means any person that expressly or impliedly contracts to
23 perform mortgage brokering services for another and that with respect
24 to its manner or means of performing the services is not subject to the
25 other's right of control, and that is not treated as an employee by the
26 other for purposes of compliance with federal income tax laws.

27 ~~((9) "Investigation" means an examination undertaken for the~~
28 ~~purpose of detection of violations of this chapter or securing~~
29 ~~information lawfully required under this chapter.))~~

30 (10) "Loan originator" means a natural person ~~((employed, either~~
31 ~~directly or indirectly, or retained as an independent contractor by a~~
32 ~~person required to be licensed as a mortgage broker, or a natural~~
33 ~~person who represents a person required to be licensed as a mortgage~~
34 ~~broker, in the performance of any act specified in subsection (12) of~~
35 ~~this section)) who (a) takes a residential mortgage loan application~~
36 ~~for a mortgage broker, or (b) offers or negotiates terms of a mortgage~~
37 ~~loan, for direct or indirect compensation or gain, or in the~~
38 ~~expectation of direct or indirect compensation or gain. "Loan~~

1 originator" also includes a person who holds themselves out to the
2 public as able to perform any of these activities. "Loan originator"
3 does not mean persons performing purely administrative or clerical
4 tasks for a mortgage broker. For the purposes of this subsection,
5 "administrative or clerical tasks" means the receipt, collection, and
6 distribution of information common for the processing of a loan in the
7 mortgage industry and communication with a borrower to obtain
8 information necessary for the processing of a loan. A person who holds
9 himself or herself out to the public as able to obtain a loan is not
10 performing administrative or clerical tasks.

11 (11) "Lock-in agreement" means an agreement with a borrower made by
12 a mortgage broker or loan originator, in which the mortgage broker or
13 loan originator agrees that, for a period of time, a specific interest
14 rate or other financing terms will be the rate or terms at which it
15 will make a loan available to that borrower.

16 (12) "Mortgage broker" means any person who for compensation or
17 gain, or in the expectation of compensation or gain (a) makes a
18 residential mortgage loan or assists a person in obtaining or applying
19 to obtain a residential mortgage loan or (b) holds himself or herself
20 out as being able to make a residential mortgage loan or assist a
21 person in obtaining or applying to obtain a residential mortgage loan.

22 (13) "Person" means a natural person, corporation, company, limited
23 liability corporation, partnership, or association.

24 (14) "Principal" means any person who controls, directly or
25 indirectly through one or more intermediaries, or alone or in concert
26 with others, a ten percent or greater interest in a partnership,
27 company, association, or corporation, and the owner of a sole
28 proprietorship.

29 (15) "Residential mortgage loan" means any loan primarily for
30 personal, family, or household use secured by a mortgage or deed of
31 trust on residential real estate upon which is constructed or intended
32 to be constructed a single family dwelling or multiple family dwelling
33 of four or less units.

34 ((+15+)) (16) "Third-party provider" means any person other than a
35 mortgage broker or lender who provides goods or services to the
36 mortgage broker in connection with the preparation of the borrower's
37 loan and includes, but is not limited to, credit reporting agencies,

1 title companies, appraisers, structural and pest inspectors, or escrow
2 companies.

3 **Sec. 3.** RCW 19.146.020 and 1997 c 106 s 2 are each amended to read
4 as follows:

5 (1) Except as provided under subsections (2) (~~and (3)~~) through
6 (4) of this section, the following are exempt from all provisions of
7 this chapter:

8 (a)(i) Any person doing business under the laws of the state of
9 Washington or the United States, and any federally insured depository
10 institution doing business under the laws of any other state, relating
11 to commercial banks, bank holding companies, savings banks, trust
12 companies, savings and loan associations, credit unions, (~~consumer~~
13 ~~loan companies,~~) insurance companies, or real estate investment trusts
14 as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and
15 service corporations thereof; and

16 (ii) Subject to the director's written approval, the exclusive
17 agents of an affiliate of a bank that is wholly owned by the bank
18 holding company that owns the bank;

19 (b) Any person doing business under the consumer loan act is exempt
20 from this chapter only for that business conducted under the authority
21 and coverage of the consumer loan act;

22 (c) An attorney licensed to practice law in this state who is not
23 principally engaged in the business of negotiating residential mortgage
24 loans when such attorney renders services in the course of his or her
25 practice as an attorney;

26 (~~(e)~~) (d) Any person doing any act under order of any court,
27 except for a person subject to an injunction to comply with any
28 provision of this chapter or any order of the director issued under
29 this chapter;

30 (~~(d)~~) (e) Any person making or acquiring a residential mortgage
31 loan solely with his or her own funds for his or her own investment
32 without intending to resell the residential mortgage loans;

33 (~~(e)~~) (f) A real estate broker or salesperson licensed by the
34 state who obtains financing for a real estate transaction involving a
35 bona fide sale of real estate in the performance of his or her duties
36 as a real estate broker and who receives only the customary real estate

1 broker's or salesperson's commission in connection with the
2 transaction;

3 ~~((f))~~ (g) Any mortgage broker approved and subject to auditing by
4 the federal national mortgage association or the federal home loan
5 mortgage corporation;

6 ~~((g))~~ (h) The United States of America, the state of Washington,
7 any other state, and any Washington city, county, or other political
8 subdivision, and any agency, division, or corporate instrumentality of
9 any of the entities in this subsection (1)~~((g))~~ (h); and

10 ~~((h))~~ (i) A real estate broker who provides only information
11 regarding rates, terms, and lenders in connection with a CLI system,
12 who receives a fee for providing such information, who conforms to all
13 rules of the director with respect to the providing of such service,
14 and who discloses on a form approved by the director that to obtain a
15 loan the borrower must deal directly with a mortgage broker or lender.
16 However, a real estate broker shall not be exempt if he or she does any
17 of the following:

18 (i) Holds himself or herself out as able to obtain a loan from a
19 lender;

20 (ii) Accepts a loan application, or submits a loan application to
21 a lender;

22 (iii) Accepts any deposit for third-party services or any loan fees
23 from a borrower, whether such fees are paid before, upon, or after the
24 closing of the loan;

25 (iv) Negotiates rates or terms with a lender on behalf of a
26 borrower; or

27 (v) Provides the disclosure required by RCW 19.146.030(1).

28 (2) Those persons and their loan originators otherwise exempt under
29 subsection (1)~~((d) or (f))~~ (e), (g), or (4) of this section must
30 comply with RCW 19.146.0201 ~~((and shall be subject to the director's
31 authority to issue a cease and desist order for any violation of RCW
32 19.146.0201 and shall be subject to the director's authority))~~ through
33 19.146.080. For violations of RCW 19.146.0201 through 19.146.080, the
34 director has authority to issue a cease and desist order as provided in
35 RCW 19.146.220 and 19.146.227, to impose penalties as provided in RCW
36 19.146.220, and to obtain and review books and records that are
37 relevant to any allegation of such a violation as provided in RCW
38 19.146.235.

1 (3) Any person otherwise exempted from the licensing provisions of
2 this chapter may voluntarily submit an application to the director for
3 a mortgage broker's license. The director shall review such
4 application and may grant or deny licenses to such applicants upon the
5 same grounds and with the same fees as may be applicable to persons
6 required to be licensed under this chapter.

7 (a) Upon receipt of a license under this subsection, (~~such an~~
8 ~~applicant~~) the licensee is required to continue to maintain a valid
9 license, is subject to all provisions of this chapter, and has no
10 further right to claim exemption from the provisions of this chapter
11 except as provided in (b) of this subsection.

12 (b) Any licensee under this subsection who would otherwise be
13 exempted from the requirements of licensing by (~~RCW 19.146.020~~) this
14 section may apply to the director for exemption from licensing. The
15 director shall adopt rules for reviewing such applications and shall
16 grant exemptions from licensing to applications which are consistent
17 with those rules and consistent with the other provisions of this
18 chapter.

19 (4) The director may exempt an exclusive agent under subsection
20 (1)(a) of this section provided that the affiliate in subsection (1)(a)
21 of this section:

22 (a) Applies for and maintains a license as provided by subsection
23 (3) of this section;

24 (b) Has on file with the director a binding written agreement under
25 which the affiliate assumes responsibility for the exclusive agent's
26 violations of this chapter or rules adopted under this chapter; and

27 (c) Maintains a bond or other security in an amount required by the
28 director that runs to the benefit of the state and any person who
29 suffers loss by reason of the exclusive agent's violation of this
30 chapter or rules adopted under this chapter.

31 **Sec. 4.** RCW 19.146.0201 and 1997 c 106 s 3 are each amended to
32 read as follows:

33 It is a violation of this chapter for a loan originator, mortgage
34 broker required to be licensed under this chapter, or mortgage broker
35 otherwise exempted from this chapter under RCW 19.146.020(1) (~~(d) or~~
36 ~~(f) in connection with a residential mortgage loan~~) (e), (g), or (4)
37 to:

- 1 (1) Directly or indirectly employ any scheme, device, or artifice
2 to defraud or mislead borrowers or lenders or to defraud any person;
- 3 (2) Engage in any unfair or deceptive practice toward any person;
- 4 (3) Obtain property by fraud or misrepresentation;
- 5 (4) Solicit or enter into a contract with a borrower that provides
6 in substance that the mortgage broker may earn a fee or commission
7 through the mortgage broker's "best efforts" to obtain a loan even
8 though no loan is actually obtained for the borrower;
- 9 (5) Solicit, advertise, or enter into a contract for specific
10 interest rates, points, or other financing terms unless the terms are
11 actually available at the time of soliciting, advertising, or
12 contracting from a person exempt from licensing under RCW 19.146.020(1)
13 (~~(f)~~) (g) or (h) or a lender with whom the mortgage broker
14 maintains a written correspondent or loan (~~brokerage~~) broker
15 agreement under RCW 19.146.040;
- 16 (6) Fail to make disclosures to loan applicants and
17 noninstitutional investors as required by RCW 19.146.030 and any other
18 applicable state or federal law;
- 19 (7) Make, in any manner, any false or deceptive statement or
20 representation with regard to the rates, points, or other financing
21 terms or conditions for a residential mortgage loan or engage in bait
22 and switch advertising;
- 23 (8) Negligently make any false statement or knowingly and willfully
24 make any omission of material fact in connection with any reports filed
25 by a mortgage broker or in connection with any investigation conducted
26 by the department;
- 27 (9) Make any payment, directly or indirectly, to any appraiser of
28 a property, for the purposes of influencing the independent judgment of
29 the appraiser with respect to the value of the property;
- 30 (10) Advertise any rate of interest without conspicuously
31 disclosing the annual percentage rate implied by such rate of interest
32 (~~or otherwise~~);
- 33 (11) Fail to comply with any requirement of the truth-in-lending
34 act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226(~~(7)~~); the
35 real estate settlement procedures act, 12 U.S.C. Sec. 2601 and
36 Regulation X, 24 C.F.R. Sec. 3500(~~(7)~~); the equal credit opportunity
37 act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and
38 202.12(~~(7, as now or hereafter amended, in any advertising of~~

1 ~~residential mortgage loans or any other mortgage brokerage activity~~);
2 Title V, Subtitle A of the financial modernization act of 1999 (known
3 as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the
4 federal trade commission's privacy rules, 16 C.F.R. Parts 313-314,
5 mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure
6 act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage
7 disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15
8 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act,
9 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission
10 telephone sales rule, 16 C.F.R. Part 310, as these acts existed on the
11 effective date of this section, or such subsequent date as may be
12 provided by the department by rule, in any advertising of residential
13 mortgage loans, or any other applicable mortgage broker or loan
14 originator activities covered by the acts. The department may adopt by
15 rule requirements that mortgage brokers and loan originators comply
16 with other applicable federal statutes and regulations in any
17 advertising of residential mortgage loans, or any other mortgage broker
18 or loan originator activity;

19 ((+11)) (12) Fail to pay third-party providers no later than
20 thirty days after the recording of the loan closing documents or ninety
21 days after completion of the third-party service, whichever comes
22 first, unless otherwise agreed or unless the third-party service
23 provider has been notified in writing that a bona fide dispute exists
24 regarding the performance or quality of the third-party service;

25 ((+12)) (13) Collect, charge, attempt to collect or charge or use
26 or propose any agreement purporting to collect or charge any fee
27 prohibited by RCW 19.146.030 or 19.146.070;

28 ((+13)) (14)(a) Except when complying with (b) and (c) of this
29 subsection, ((to)) act as a ((mortgage broker)) loan originator in any
30 transaction (i) in which the ((mortgage broker)) loan originator acts
31 or has acted as a real estate broker or salesperson or (ii) in which
32 another person doing business under the same licensed real estate
33 broker acts or has acted as a real estate broker or salesperson;

34 (b) Prior to providing mortgage ((broker)) services to the
35 borrower, ((the mortgage broker)) a loan originator, in addition to
36 other disclosures required by this chapter and other laws, shall
37 provide to the borrower the following written disclosure:

38 THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES

1 HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON
2 REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO
3 YOU. I AM ALSO A ((~~LICENSED MORTGAGE BROKER~~)) LOAN ORIGINATOR,
4 AND WOULD LIKE TO PROVIDE MORTGAGE ((~~BROKERAGE~~)) SERVICES TO
5 YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.
6 YOU ARE NOT REQUIRED TO USE ME AS A ((~~MORTGAGE BROKER~~)) LOAN
7 ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE
8 TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND
9 TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

10 (c) A real estate broker or salesperson licensed under chapter
11 18.85 RCW who also acts as a mortgage broker shall carry on such
12 mortgage ((~~brokerage~~)) broker business activities and shall maintain
13 such person's mortgage ((~~brokerage~~)) broker business records separate
14 and apart from the real estate ((~~brokerage~~)) broker activities
15 conducted pursuant to chapter 18.85 RCW. Such activities shall be
16 deemed separate and apart even if they are conducted at an office
17 location with a common entrance and mailing address, so long as each
18 business is clearly identified by a sign visible to the public, each
19 business is physically separated within the office facility, and no
20 deception of the public as to the separate identities of the
21 ((~~brokerage~~)) broker business firms results. This subsection ((~~+13~~))
22 (14)(c) shall not require a real estate broker or salesperson licensed
23 under chapter 18.85 RCW who also acts as a mortgage broker to maintain
24 a physical separation within the office facility for the conduct of its
25 real estate and mortgage ((~~brokerage~~)) broker activities where the
26 director determines that maintaining such physical separation would
27 constitute an undue financial hardship upon the mortgage broker and is
28 unnecessary for the protection of the public; or

29 ((~~+14~~)) (15) Fail to comply with any provision of RCW 19.146.030
30 through 19.146.080 or any rule adopted under those sections.

31 **Sec. 5.** RCW 19.146.030 and 1997 c 106 s 4 are each amended to read
32 as follows:

33 (1) Within three business days following receipt of a loan
34 application or any moneys from a borrower, a mortgage broker or loan
35 originator on behalf of the mortgage broker shall provide to each
36 borrower a full written disclosure containing an itemization and
37 explanation of all fees and costs that the borrower is required to pay

1 in connection with obtaining a residential mortgage loan, and
2 specifying the fee or fees which inure to the benefit of the mortgage
3 broker and other such disclosures as may be required by rule. A good
4 faith estimate of a fee or cost shall be provided if the exact amount
5 of the fee or cost is not determinable. This subsection shall not be
6 construed to require disclosure of the distribution or breakdown of
7 loan fees, discount, or points between the mortgage broker and any
8 lender or investor.

9 (2) The written disclosure shall contain the following information:

10 (a) The annual percentage rate, finance charge, amount financed,
11 total amount of all payments, number of payments, amount of each
12 payment, amount of points or prepaid interest and the conditions and
13 terms under which any loan terms may change between the time of
14 disclosure and closing of the loan; and if a variable rate, the
15 circumstances under which the rate may increase, any limitation on the
16 increase, the effect of an increase, and an example of the payment
17 terms resulting from an increase. Disclosure in compliance with the
18 requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and
19 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be
20 deemed to comply with the disclosure requirements of this subsection;

21 (b) The itemized costs of any credit report, appraisal, title
22 report, title insurance policy, mortgage insurance, escrow fee,
23 property tax, insurance, structural or pest inspection, and any other
24 third-party provider's costs associated with the residential mortgage
25 loan. Disclosure through good faith estimates of settlement services
26 and special information booklets in compliance with the requirements of
27 the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and
28 Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall
29 be deemed to comply with the disclosure requirements of this
30 subsection;

31 (c) If applicable, the cost, terms, duration, and conditions of a
32 lock-in agreement and whether a lock-in agreement has been entered, and
33 whether the lock-in agreement is guaranteed by the mortgage broker or
34 lender, and if a lock-in agreement has not been entered, disclosure in
35 a form acceptable to the director that the disclosed interest rate and
36 terms are subject to change;

37 (d) A statement that if the borrower is unable to obtain a loan for
38 any reason, the mortgage broker must, within five days of a written

1 request by the borrower, give copies of any appraisal, title report, or
2 credit report paid for by the borrower to the borrower, and transmit
3 the appraisal, title report, or credit report to any other mortgage
4 broker or lender to whom the borrower directs the documents to be sent;

5 (e) Whether and under what conditions any lock-in fees are
6 refundable to the borrower; and

7 (f) A statement providing that moneys paid by the borrower to the
8 mortgage broker for third-party provider services are held in a trust
9 account and any moneys remaining after payment to third-party providers
10 will be refunded.

11 (3) If subsequent to the written disclosure being provided under
12 this section, a mortgage broker or loan originator enters into a lock-
13 in agreement with a borrower or represents to the borrower that the
14 borrower has entered into a lock-in agreement, then no less than three
15 business days thereafter including Saturdays, the mortgage broker or
16 loan originator shall deliver or send by first-class mail to the
17 borrower a written confirmation of the terms of the lock-in agreement,
18 which shall include a copy of the disclosure made under subsection
19 (2)(c) of this section.

20 (4) A mortgage broker or loan originator on behalf of a mortgage
21 broker shall not charge any fee that inures to the benefit of the
22 mortgage broker if it exceeds the fee disclosed on the written
23 disclosure pursuant to this section, unless (a) the need to charge the
24 fee was not reasonably foreseeable at the time the written disclosure
25 was provided and (b) the mortgage broker or loan originator on behalf
26 of a mortgage broker has provided to the borrower, no less than three
27 business days prior to the signing of the loan closing documents, a
28 clear written explanation of the fee and the reason for charging a fee
29 exceeding that which was previously disclosed. However, if the
30 borrower's closing costs on the final settlement statement, excluding
31 prepaid escrowed costs of ownership as defined by rule, does not exceed
32 the total closing costs in the most recent good faith estimate,
33 excluding prepaid escrowed costs of ownership as defined by rule, no
34 other disclosures shall be required by this subsection.

35 **Sec. 6.** RCW 19.146.040 and 1994 c 33 s 19 are each amended to read
36 as follows:

1 (1) Every contract between a mortgage broker, or a loan originator,
2 and a borrower shall be in writing and shall contain the entire
3 agreement of the parties.

4 (2) Any contract under this section entered by a loan originator
5 shall be binding on the mortgage broker.

6 (3) A mortgage broker shall have a written correspondent or loan
7 (~~brokerage~~) broker agreement with a lender before any solicitation
8 of, or contracting with, the public.

9 **Sec. 7.** RCW 19.146.060 and 1997 c 106 s 6 are each amended to read
10 as follows:

11 (1) A mortgage broker shall use generally accepted accounting
12 principles.

13 (2) Except as otherwise provided in subsection (3) of this section,
14 a mortgage broker shall maintain accurate and current books and records
15 which shall be readily available at (~~the mortgage broker's usual~~
16 ~~business~~) a location available to the director until at least twenty-
17 five months have elapsed following the effective period to which the
18 books and records relate.

19 (3) Where a mortgage broker's usual business location is outside of
20 the state of Washington, the mortgage broker shall, as determined by
21 the director by rule, either maintain its books and records at a
22 location in this state, or reimburse the director for his or her
23 expenses, including but not limited to transportation, food, and
24 lodging expenses, relating to any examination or investigation
25 resulting under this chapter.

26 (4) "Books and records" includes but is not limited to:

27 (a) Copies of all advertisements placed by or at the request of the
28 mortgage broker which mention rates or fees. In the case of radio or
29 television advertisements, or advertisements placed on a telephonic
30 information line or other electronic source of information including
31 but not limited to a computer data base or electronic bulletin board,
32 a mortgage broker shall keep copies of the precise script for the
33 advertisement. All advertisement records shall include for each
34 advertisement the date or dates of publication and name of each
35 periodical, broadcast station, or telephone information line which
36 published the advertisement or, in the case of a flyer or other

1 material distributed by the mortgage broker, the dates, methods, and
2 areas of distribution; and

3 (b) Copies of all documents, notes, computer records if not stored
4 in printed form, correspondence or memoranda relating to a borrower
5 from whom the mortgage broker has accepted a deposit or other funds, or
6 accepted a residential mortgage loan application or with whom the
7 mortgage broker has entered into an agreement to assist in obtaining a
8 residential mortgage loan.

9 **Sec. 8.** RCW 19.146.070 and 1993 c 468 s 13 are each amended to
10 read as follows:

11 (1) Except as otherwise permitted by this section, a mortgage
12 broker shall not receive a fee, commission, or compensation of any kind
13 in connection with the preparation, negotiation, and brokering of a
14 residential mortgage loan unless a borrower actually obtains a loan
15 from a lender on the terms and conditions agreed upon by the borrower
16 and mortgage broker. A loan originator may not accept a fee,
17 commission, or compensation of any kind from borrowers in connection
18 with the preparation, negotiation, and brokering of a residential
19 mortgage loan.

20 (2) A mortgage broker may:

21 (a) If the mortgage broker has obtained for the borrower a written
22 commitment from a lender for a loan on the terms and conditions agreed
23 upon by the borrower and the mortgage broker, and the borrower fails to
24 close on the loan through no fault of the mortgage broker, charge a fee
25 not to exceed three hundred dollars for services rendered, preparation
26 of documents, or transfer of documents in the borrower's file which
27 were prepared or paid for by the borrower if the fee is not otherwise
28 prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and
29 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

30 (b) Solicit or receive fees for third party provider goods or
31 services in advance. Fees for any goods or services not provided must
32 be refunded to the borrower and the mortgage broker may not charge more
33 for the goods and services than the actual costs of the goods or
34 services charged by the third party provider.

35 (3) A loan originator may not solicit or receive fees for a third-
36 party provider of goods or services except that a loan originator may
37 transfer funds from a borrower to a licensed mortgage broker, exempt

1 mortgage broker, or third-party provider, if the loan originator does
2 not deposit, hold, retain, or use the funds for any purpose other than
3 the payment of bona fide fees to third-party providers.

4 **Sec. 9.** RCW 19.146.200 and 1997 c 106 s 8 are each amended to read
5 as follows:

6 (1) A person, unless specifically exempted from this chapter under
7 RCW 19.146.020, may not engage in the business of a mortgage broker(~~(~~
8 ~~except as an employee of a person licensed or exempt from licensing,~~)
9 or loan originator without first obtaining and maintaining a license
10 under this chapter. (~~(However, a person who independently contracts~~
11 ~~with a licensed mortgage broker need not be licensed if the licensed~~
12 ~~mortgage broker and the independent contractor have on file with the~~
13 ~~director a binding written agreement under which the licensed mortgage~~
14 ~~broker assumes responsibility for the independent contractor's~~
15 ~~violations of any provision of this chapter or rules adopted under this~~
16 ~~chapter; and if the licensed mortgage broker's bond or other security~~
17 ~~required under this chapter runs to the benefit of the state and any~~
18 ~~person who suffers loss by reason of the independent contractor's~~
19 ~~violation of any provision of this chapter or rules adopted under this~~
20 ~~chapter.))~~)

21 (2) A person may not bring a suit or action for the collection of
22 compensation (~~(as a mortgage broker)~~) in connection with a residential
23 mortgage loan unless the plaintiff alleges and proves that he or she
24 was a duly licensed mortgage broker, or exempt from the license
25 requirement of this chapter, at the time of offering to perform or
26 performing any such an act or service regulated by this chapter.
27 (~~(This subsection does not apply to suits or actions for the collection~~
28 ~~or compensation for services performed prior to October 31, 1993.))~~)

29 (3) (~~The~~) A mortgage broker license must be prominently displayed
30 in the mortgage broker's place of business.

31 (4) Every licensed mortgage broker must at all times have a
32 designated broker responsible for all activities of the mortgage broker
33 in conducting the business of a mortgage broker. A designated broker,
34 principal, or owner who has supervisory authority over a mortgage
35 broker is responsible for a licensee's, employee's, or independent
36 contractor's violations of this chapter and its rules if:

1 (a) The designated broker, principal, or owner directs or instructs
2 the conduct or, with knowledge of the specific conduct, approves or
3 allows the conduct; or

4 (b) The designated broker, principal, or owner who has supervisory
5 authority over the licensed mortgage broker knows or by the exercise of
6 reasonable care and inquiry should have known of the conduct, at a time
7 when its consequences can be avoided or mitigated and fails to take
8 reasonable remedial action.

9 **Sec. 10.** RCW 19.146.205 and 2001 c 177 s 4 are each amended to
10 read as follows:

11 (1) Application for a mortgage broker license under this chapter
12 shall be in writing and in the form prescribed by the director. The
13 application shall contain at least the following information:

14 (a) The name, address, date of birth, and social security number of
15 the applicant, and any other names, dates of birth, or social security
16 numbers previously used by the applicant, unless waived by the
17 director;

18 (b) If the applicant is a partnership or association, the name,
19 address, date of birth, and social security number of each general
20 partner or principal of the association, and any other names, dates of
21 birth, or social security numbers previously used by the members,
22 unless waived by the director;

23 (c) If the applicant is a corporation, the name, address, date of
24 birth, and social security number of each officer, director, registered
25 agent, and each principal stockholder, and any other names, dates of
26 birth, or social security numbers previously used by the officers,
27 directors, registered agents, and principal stockholders unless waived
28 by the director;

29 (d) The street address, county, and municipality where the
30 principal business office is to be located;

31 (e) The name, address, date of birth, and social security number of
32 the applicant's designated broker, and any other names, dates of birth,
33 or social security numbers previously used by the designated broker and
34 a complete set of the designated broker's fingerprints taken by an
35 authorized law enforcement officer; and

36 (f) Such other information regarding the applicant's or designated

1 broker's background, financial responsibility, experience, character,
2 and general fitness as the director may require by rule.

3 ~~(2) ((The director may exchange fingerprint data with the federal~~
4 ~~bureau of investigation.))~~ As a part of or in connection with an
5 application for any license under this section, the applicant shall
6 furnish information concerning his or her identity, including
7 fingerprints for submission to the Washington state patrol, the federal
8 bureau of investigation, and any governmental agency or entity
9 authorized to receive this information for a state and national
10 criminal history background check; personal history; experience;
11 business record; purposes; and other pertinent facts, as the director
12 may reasonably require. As part of or in connection with an
13 application for a license under this chapter, the director is
14 authorized to receive criminal history record information that includes
15 nonconviction data as defined in RCW 10.97.030. The department may
16 only disseminate nonconviction data obtained under this section to
17 criminal justice agencies. This section does not apply to financial
18 institutions regulated under chapters 31.12 and 31.13 RCW and Titles
19 30, 32, and 33 RCW.

20 (3) At the time of filing an application for a license under this
21 chapter, each applicant shall pay to the director the appropriate
22 application fee in an amount determined by rule of the director in
23 accordance with RCW 43.24.086 to cover, but not exceed, the cost of
24 processing and reviewing the application. The director shall deposit
25 the moneys in the financial services regulation fund, unless the
26 consumer services account is created as a dedicated, nonappropriated
27 account, in which case the director shall deposit the moneys in the
28 consumer services account.

29 (4)(a) Each applicant for a mortgage broker's license shall file
30 and maintain a surety bond, in an amount of not greater than sixty
31 thousand dollars nor less than twenty thousand dollars which the
32 director deems adequate to protect the public interest, executed by the
33 applicant as obligor and by a surety company authorized to do a surety
34 business in this state as surety. The bonding requirement as
35 established by the director may take the form of a uniform bond amount
36 for all licensees or the director may establish by rule a schedule
37 establishing a range of bond amounts which shall vary according to the
38 annual average number of loan originators ~~((or independent~~

1 ~~contractors~~) of a licensee. The bond shall run to the state of
2 Washington as obligee, and shall run first to the benefit of the
3 borrower and then to the benefit of the state and any person or persons
4 who suffer loss by reason of the applicant's or its loan originator's
5 violation of any provision of this chapter or rules adopted under this
6 chapter. The bond shall be conditioned that the obligor as licensee
7 will faithfully conform to and abide by this chapter and all rules
8 adopted under this chapter, and shall reimburse all persons who suffer
9 loss by reason of a violation of this chapter or rules adopted under
10 this chapter. Borrowers shall be given priority over the state and
11 other persons. The state and other third parties shall be allowed to
12 receive distribution pursuant to a valid claim against the remainder of
13 the bond. In the case of claims made by any person or entity who is
14 not a borrower, no final judgment may be entered prior to one hundred
15 eighty days following the date the claim is filed. The bond shall be
16 continuous and may be canceled by the surety upon the surety giving
17 written notice to the director of its intent to cancel the bond. The
18 cancellation shall be effective thirty days after the notice is
19 received by the director. Whether or not the bond is renewed,
20 continued, reinstated, reissued, or otherwise extended, replaced, or
21 modified, including increases or decreases in the penal sum, it shall
22 be considered one continuous obligation, and the surety upon the bond
23 shall not be liable in an aggregate or cumulative amount exceeding the
24 penal sum set forth on the face of the bond. In no event shall the
25 penal sum, or any portion thereof, at two or more points in time be
26 added together in determining the surety's liability. The bond shall
27 not be liable for any penalties imposed on the licensee, including, but
28 not limited to, any increased damages or attorneys' fees, or both,
29 awarded under RCW 19.86.090. The applicant may obtain the bond
30 directly from the surety or through a group bonding arrangement
31 involving a professional organization comprised of mortgage brokers if
32 the arrangement provides at least as much coverage as is required under
33 this subsection.

34 (b) Subsection (4)(b) and (c) of this section applies only to
35 applications received on or before January 1, 2007. Before January 1,
36 2007, in lieu of a surety bond, the applicant may, upon approval by the
37 director, file with the director a certificate of deposit, an

1 irrevocable letter of credit, or such other instrument as approved by
2 the director by rule, drawn in favor of the director for an amount
3 equal to the required bond.

4 (c) Before January 1, 2007, in lieu of the surety bond or
5 compliance with (b) of this subsection, an applicant may obtain
6 insurance or coverage from an association comprised of mortgage brokers
7 that is organized as a mutual corporation for the sole purpose of
8 insuring or self-insuring claims that may arise from a violation of
9 this chapter. An applicant may only substitute coverage under this
10 subsection for the requirements of (a) or (b) of this subsection if the
11 director, with the consent of the insurance commissioner, has
12 authorized such association to organize a mutual corporation under such
13 terms and conditions as may be imposed by the director to ensure that
14 the corporation is operated in a financially responsible manner to pay
15 any claims within the financial responsibility limits specified in (a)
16 of this subsection.

17 **Sec. 11.** RCW 19.146.210 and 1997 c 106 s 10 are each amended to
18 read as follows:

19 (1) The director shall issue and deliver a mortgage broker license
20 to an applicant if, after investigation, the director makes the
21 following findings:

22 (a) The applicant has paid the required license fees;

23 (b) The applicant has complied with RCW 19.146.205;

24 (c) Neither the applicant, any of its principals, or the designated
25 broker have had a license issued under this chapter or any similar
26 state statute suspended or revoked within five years of the filing of
27 the present application;

28 (d) Neither the applicant, any of its principals, or the designated
29 broker have been convicted of a gross misdemeanor involving dishonesty
30 or financial misconduct or a felony within seven years of the filing of
31 the present application;

32 (e) The designated broker, (i) has at least two years of experience
33 in the residential mortgage loan industry (~~(or has completed the~~
34 ~~educational requirements established by rule of the director)) and (ii)~~
35 has passed a written examination whose content shall be established by
36 rule of the director; (~~and~~))

1 (f) The applicant (~~has~~), its principals, and the designated
2 broker have demonstrated financial responsibility, character, and
3 general fitness such as to command the confidence of the community and
4 to warrant a belief that the business will be operated honestly,
5 fairly, and efficiently within the purposes of this chapter; and

6 (g) Neither the applicant, any of its principals, or the designated
7 broker have been found to be in violation of this chapter or rules.

8 (2) If the director does not find the conditions of subsection (1)
9 of this section have been met, the director shall not issue the
10 license. The director shall notify the applicant of the denial and
11 return to the applicant the bond or approved alternative and any
12 remaining portion of the license fee that exceeds the department's
13 actual cost to investigate the license.

14 (3) The director shall issue a mortgage broker license under this
15 chapter to any licensee issued a license under chapter 468, Laws of
16 1993, that has a valid license and is otherwise in compliance with the
17 provisions of this chapter.

18 (4) A license issued pursuant to this (~~chapter is valid~~) section
19 expires on the date one year from the date of issuance (~~with no fixed~~
20 ~~date of expiration~~) which, for license renewal purposes, is also the
21 renewal date. The director shall adopt rules establishing the process
22 for renewal of licenses.

23 (5) A licensee may surrender a license by delivering to the
24 director written notice of surrender, but the surrender does not affect
25 the licensee's civil or criminal liability or any administrative
26 actions arising from acts or omissions occurring before such surrender.

27 (6) To prevent undue delay in the issuance of a license and to
28 facilitate the business of a mortgage broker, an interim license with
29 a fixed date of expiration may be issued when the director determines
30 that the mortgage broker has substantially fulfilled the requirements
31 for licensing as defined by rule.

32 **Sec. 12.** RCW 19.146.215 and 1997 c 106 s 11 are each amended to
33 read as follows:

34 The designated broker of every licensee shall complete an annual
35 continuing education requirement(~~, which the director shall define by~~
36 ~~rule~~). The director shall establish standards in rule for approval of
37 professional organizations offering continuing education to designated

1 brokers. The director may approve continuing education taken by
2 designated brokers in other states if the director is satisfied that
3 such continuing education meets the requirements of the continuing
4 education required by this chapter.

5 **Sec. 13.** RCW 19.146.220 and 1997 c 106 s 12 and 1997 c 58 s 879
6 are each reenacted and amended to read as follows:

7 (1) The director (~~((shall))~~) may enforce all laws and rules relating
8 to the licensing of mortgage brokers and loan originators, grant or
9 deny licenses to mortgage brokers and loan originators, and hold
10 hearings.

11 (2) The director may impose (~~(the following sanctions:~~

12 ~~(a) Deny applications for licenses for: (i))~~ fines or order
13 restitution against licensees or other persons subject to this chapter,
14 or deny, suspend, decline to renew, or revoke licenses for:

15 (a) Violations of orders, including cease and desist orders
16 ((issued under this chapter; or (ii) any violation of RCW 19.146.050 or
17 19.146.0201 (1) through (9)));

18 (b) ((Suspend or revoke licenses for:
19 (i)) False statements or omission of material information on the
20 application that, if known, would have allowed the director to deny the
21 application for the original license;

22 ((+ii)) (c) Failure to pay a fee required by the director or
23 maintain the required bond;

24 ((+iii)) (d) Failure to comply with any directive ((or)) order,
25 or subpoena of the director; or

26 ((+iv)) (e) Any violation of ((RCW 19.146.050, 19.146.060(3),
27 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;
28 (e)) this chapter.

29 (3) The director may impose fines on ((the licensee,)) an employee
30 ((or)) loan originator, independent contractor, or agent of the
31 licensee, or other person subject to this chapter for:

32 ((+i)) (a) Any violations of RCW 19.146.0201 (1) through (9) or
33 ((+12)) (13), 19.146.030 through 19.146.080, 19.146.200,
34 19.146.205(4), or 19.146.265; or

35 ((+ii)) (b) Failure to comply with any directive or order of the
36 director((+)).

1 ~~((d))~~ (4) The director may issue orders directing a licensee, its
2 employee ~~((e))~~, loan originator, independent contractor, agent, or
3 other person subject to this chapter to
4 (i) cease and desist from conducting business ~~((in a manner that~~
5 ~~is injurious to the public or violates any provision of this chapter;~~
6 ~~e~~
7 ~~(ii) Pay restitution to an injured borrower; or~~
8 ~~(e))~~).

9 (5) The director may issue orders removing from office or
10 prohibiting from participation in the conduct of the affairs of a
11 licensed mortgage broker, or both, any officer, principal, employee, or
12 loan originator of any licensed mortgage broker or any person subject
13 to licensing under this chapter for:

14 ~~((i))~~ (a) Any violation of 19.146.0201 (1) through (9) or
15 ~~((12))~~ (13), 19.146.030 through 19.146.080, 19.146.200,
16 19.146.205(4), or 19.146.265; ~~((e~~
17 ~~(ii))~~ (b) False statements or omission of material information on
18 the application that, if known, would have allowed the director to deny
19 the application for the original license;

20 ~~((iii))~~ (c) Conviction of a gross misdemeanor involving
21 dishonesty or financial misconduct or a felony after obtaining a
22 license; or

23 ~~((iv))~~ (d) Failure to comply with any directive or order of the
24 director.

25 ~~((3))~~ (6) Each day's continuance of a violation or failure to
26 comply with any directive or order of the director is a separate and
27 distinct violation or failure.

28 ~~((4))~~ (7) The director shall establish by rule standards for
29 licensure of applicants licensed in other jurisdictions.

30 ~~((5))~~ (8) The director shall immediately suspend the license or
31 certificate of a person who has been certified pursuant to RCW
32 74.20A.320 by the department of social and health services as a person
33 who is not in compliance with a support order ~~((or a residential or~~
34 ~~visitation order))~~. If the person has continued to meet all other
35 requirements for reinstatement during the suspension, reissuance of the
36 license or certificate shall be automatic upon the director's receipt
37 of a release issued by the department of social and health services
38 stating that the licensee is in compliance with the order.

1 **Sec. 14.** RCW 19.146.225 and 1994 c 33 s 15 are each amended to
2 read as follows:

3 In accordance with the administrative procedure act, chapter 34.05
4 RCW, the director may issue rules under this chapter only after seeking
5 the advice of the mortgage ~~((brokerage))~~ broker commission and ~~((to~~
6 ~~govern))~~ only for the purpose of governing the activities of licensed
7 mortgage brokers, loan originators, and other persons subject to this
8 chapter.

9 **Sec. 15.** RCW 19.146.228 and 2001 c 177 s 5 are each amended to
10 read as follows:

11 The director shall establish fees by rule in accordance with the
12 policy established in RCW 43.24.086 and fees shall be sufficient to
13 cover, but not exceed, the costs of administering this chapter. These
14 fees may include:

15 (1) An annual assessment paid by each licensee on or before a date
16 specified by rule;

17 (2) An investigation fee to cover the costs of any investigation of
18 the books and records of a licensee or other person subject to this
19 chapter; and

20 (3) An application fee to cover the costs of processing
21 applications made to the director under this chapter.

22 Mortgage brokers and loan originators shall not be charged
23 investigation fees for the processing of complaints when the
24 investigation determines that no violation of this chapter occurred or
25 when the mortgage broker or loan originator provides a remedy
26 satisfactory to the complainant and the director and no order of the
27 director is issued. All moneys, fees, and penalties collected under
28 the authority of this chapter shall be deposited into the financial
29 services regulation fund, unless the consumer services account is
30 created as a dedicated, nonappropriated account, in which case all
31 moneys, fees, and penalties collected under this chapter shall be
32 deposited in the consumer services account.

33 **Sec. 16.** RCW 19.146.235 and 1997 c 106 s 14 are each amended to
34 read as follows:

35 ~~((For the purposes of investigating complaints arising under this~~
36 ~~chapter, the director may at any time, either personally or by a~~

1 ~~designee, examine the business, including but not limited to the books,~~
2 ~~accounts, records, and files used therein, of every licensee and of~~
3 ~~every person engaged in the business of mortgage brokering, whether~~
4 ~~such a person shall act or claim to act under or without the authority~~
5 ~~of this chapter. For that purpose the director and designated~~
6 ~~representatives shall have access during regular business hours to the~~
7 ~~offices and places of business, books, accounts, papers, records,~~
8 ~~files, safes, and vaults of all such persons. The director or~~
9 ~~designated person may direct or order the attendance of and examine~~
10 ~~under oath all persons whose testimony may be required about the loans~~
11 ~~or the business or subject matter of any such examination or~~
12 ~~investigation, and may direct or order such person to produce books,~~
13 ~~accounts, records, files, and any other documents the director or~~
14 ~~designated person deems relevant to the inquiry. If a person who~~
15 ~~receives such a directive or order does not attend and testify, or does~~
16 ~~not produce the requested books, records, files, or other documents~~
17 ~~within the time period established in the directive or order, then the~~
18 ~~director or designated person may issue a subpoena requiring attendance~~
19 ~~or compelling production of books, records, files, or other documents.~~
20 ~~No person subject to examination or investigation under this chapter~~
21 ~~shall withhold, abstract, remove, mutilate, destroy, or secrete any~~
22 ~~books, records, computer records, or other information.~~

23 ~~Once during the first two years of licensing, the director may~~
24 ~~visit, either personally or by designee, the licensee's place or places~~
25 ~~of business to conduct a compliance examination. The director may~~
26 ~~examine, either personally or by designee, a sample of the licensee's~~
27 ~~loan files, interview the licensee or other designated employee or~~
28 ~~independent contractor, and undertake such other activities as~~
29 ~~necessary to ensure that the licensee is in compliance with the~~
30 ~~provisions of this chapter. For those licensees issued licenses prior~~
31 ~~to March 21, 1994, the cost of such an examination shall be considered~~
32 ~~to have been prepaid in their license fee. After this one visit within~~
33 ~~the two year period subsequent to issuance of a license, the director~~
34 ~~or a designee may visit the licensee's place or places of business only~~
35 ~~to ensure that corrective action has been taken or to investigate a~~
36 ~~complaint.))~~

37 The director or a designee has authority to conduct investigations
38 and examinations as provided in this section.

1 (1) For the purposes of investigating violations or complaints
2 arising under this chapter, the director or his or her designee may
3 make an investigation of the operations of any mortgage broker or loan
4 originator as often as necessary in order to carry out the purposes of
5 this chapter.

6 (2) Every mortgage broker shall make available to the director or
7 a designee its books and records relating to its operations.

8 (a) For the purpose of examinations, the director or his or her
9 designee may have access to such books and records during normal
10 business hours and interview the officers, principals, loan
11 originators, employees, independent contractors, and agents of the
12 licensee concerning their business.

13 (b) For the purposes of investigating violations or complaints
14 arising under this chapter, the director may at any time, either
15 personally or by a designee, investigate the business, including but
16 not limited to the books, accounts, records, and files used therein, of
17 every licensee and of every person engaged in the business of mortgage
18 brokering, whether such a person acts or claims to act under, or
19 without the authority of, this chapter.

20 (c) The director or designated person may direct, subpoena, or
21 order the attendance of and examine under oath all persons whose
22 testimony may be required about the loans or the business or subject
23 matter of any such examination or investigation, and may direct,
24 subpoena, or order such person to produce books, accounts, records,
25 files, and any other documents the director or designated person deems
26 relevant to the inquiry.

27 (3) Once during the first five years of licensing, including branch
28 licensing, the director may visit, either personally or by designee,
29 the licensee's place or places of business to conduct an examination.
30 The scope of the examination is limited to documents and information
31 necessary to determine compliance with this chapter and attendant
32 rules. In general, the examination scope may include:

33 (a) A review for trust accounting compliance;

34 (b) Loan file review to determine the mortgage broker's compliance
35 with this chapter and applicable federal regulations covering the
36 business of mortgage brokering and lending;

37 (c) Interviews for the purpose of understanding business and

1 solicitation practices, transactional events, disclosure compliance,
2 complaint resolution, or determining specific compliance with this
3 chapter and the attendant rules; and

4 (d) A review of general business books and records, including
5 employee records, for the purpose of determining specific compliance
6 with this chapter and the attendant rules.

7 (4) The purpose of an examination is to make certain that licensees
8 are conducting business in compliance with the law. Therefore,
9 protocols for examination findings and corrective action directed from
10 an examination must be established by rule of the director. To
11 accomplish this purpose, these protocols must include the following:

12 (a) A reporting mechanism from the director to the licensee;

13 (b) A process for clear notification of violations and an
14 opportunity for response by the licensee; and

15 (c) The criteria by which the frequency of examinations will be
16 determined.

17 (5) If the examination findings clearly identify the need to expand
18 the scope of the examination, the director or a designee, upon five
19 days' written notification to the licensee with an explanation of the
20 need, may:

21 (a) Expand the examination review to locations other than the
22 examined location regardless of the number of years a location has held
23 a license; or

24 (b) Expand the time period of the examination beyond the five-year
25 period of licensing, provided the expansion of time does not exceed a
26 date certain identified in the written notification in this subsection.

27 (6) The director or a designee may consider reports made by
28 independent certified professionals for the mortgage broker covering
29 the same general subject matter as the examination. The director or a
30 designee may incorporate all or part of the report in the report of the
31 examination.

32 (7) The director may retain attorneys, accountants, or other
33 professionals and specialists as examiners, auditors, or investigators
34 to conduct or assist in the conduct of examinations or investigations.
35 The cost of these services for investigations only must be billed in
36 accordance with RCW 19.146.228.

37 (8) The director may establish by rule travel costs for examination
38 of out-of-state entities.

1 (9)(a) No person subject to examination or investigation under this
2 chapter may knowingly withhold, abstract, remove, mutilate, destroy, or
3 secrete any books, records, computer records, or other information.

4 (b) A person who commits an act under (a) of this subsection is
5 guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or
6 punishable by a fine of not more than twenty thousand dollars, or both.

7 **Sec. 17.** RCW 19.146.280 and 2001 c 177 s 6 are each amended to
8 read as follows:

9 (1) There is established the mortgage (~~(brokerage)~~) broker
10 commission consisting of (~~(five)~~) seven commission members who shall
11 act in an advisory capacity to the director on mortgage (~~(brokerage)~~)
12 broker issues.

13 (2) The director shall appoint the members of the commission,
14 weighing the recommendations from professional organizations
15 representing mortgage brokers and loan originators. At least three of
16 the commission members shall be mortgage brokers licensed under this
17 chapter (~~(and)~~), at least one shall be exempt from licensure under RCW
18 19.146.020(1)(~~(f)~~) (g), and at least two of the commission members
19 shall be licensed loan originators under this chapter. No commission
20 member shall be appointed who has had less than five years' experience
21 in the business of residential mortgage lending. In addition, the
22 director or a designee shall serve as an ex officio, nonvoting member
23 of the commission. Voting members of the commission shall serve for
24 two-year terms (~~(with three of the initial commission members serving~~
25 ~~one-year terms)~~). The department shall provide staff support to the
26 commission.

27 (3) The commission may establish a code of conduct for its members.
28 Any commissioner may bring a motion before the commission to remove a
29 commissioner for failing to conduct themselves in a manner consistent
30 with the code of conduct. The motion shall be in the form of a
31 recommendation to the director to dismiss a specific commissioner and
32 shall enumerate causes for doing so. The commissioner in question
33 shall recuse himself or herself from voting on any such motion. Any
34 such motion must be approved unanimously by the remaining (~~(four)~~) six
35 commissioners. Approved motions shall be immediately transmitted to
36 the director for review and action.

1 (4) Members of the commission shall be reimbursed for their travel
2 expenses incurred in carrying out the provisions of this chapter in
3 accordance with RCW 43.03.050 and 43.03.060. All costs and expenses
4 associated with the commission shall be paid from the financial
5 services regulation fund, unless the consumer services account is
6 created as a dedicated, nonappropriated account, in which case all
7 costs and expenses shall be paid from the consumer services account.

8 (5) The commission shall advise the director on the characteristics
9 and needs of the mortgage (~~brokerage~~) broker profession.

10 (6) The department, in consultation with other applicable agencies
11 of state government, shall conduct a continuing review of the number
12 and type of consumer complaints arising from residential mortgage
13 lending in the state. The department shall report its findings to the
14 senate committee on financial institutions and house of representatives
15 committee on financial institutions and insurance along with
16 recommendations for any changes in the licensing requirements of this
17 chapter, biennially by December 1st of each even-numbered year.

18 NEW SECTION. **Sec. 18.** A new section is added to chapter 19.146
19 RCW to read as follows:

20 (1) A licensee shall provide the director with an annual report of
21 mortgage broker activity. The director may by rule create a schedule
22 and format for the annual report. The annual report may only include
23 the following for mortgage broker activities in Washington state:

24 (a) The total number of closed loans originated by the mortgage
25 broker; and

26 (b) The total dollar volume of closed loans originated by the
27 mortgage broker.

28 (2) Any information provided by a mortgage broker in an annual
29 report that constitutes a trade secret as defined in RCW 19.108.010 is
30 exempt from the disclosure requirements in chapters 42.17 and 42.56
31 RCW, unless aggregated with information supplied by other mortgage
32 brokers in such a manner that the mortgage broker's individual
33 information is not identifiable. Any information provided by the
34 mortgage broker that allows identification of the mortgage broker may
35 only be used for purposes reasonably related to the regulation of
36 mortgage brokers to ensure compliance with this chapter.

1 NEW SECTION. **Sec. 19.** A new section is added to chapter 19.146
2 RCW to read as follows:

3 (1) Application for a loan originator license under this chapter
4 shall be in writing and in the form prescribed by the director. The
5 application shall contain at least the following information:

6 (a) The name, address, date of birth, and social security number of
7 the loan originator applicant, and any other names, dates of birth, or
8 social security numbers previously used by the loan originator
9 applicant, unless waived by the director; and

10 (b) Such other information regarding the loan originator
11 applicant's background, experience, character, and general fitness as
12 the director may require by rule.

13 (2) As part of or in connection with an application for any license
14 under this section, the loan originator applicant shall furnish
15 information concerning his or her identity, including fingerprints for
16 submission to the Washington state patrol, the federal bureau of
17 investigation, and any governmental agency or entity authorized to
18 receive this information for a state and national criminal history
19 background check; personal history; experience; business record;
20 purposes; and other pertinent facts, as the director may reasonably
21 require. As part of or in connection with an application for a license
22 under this chapter, the director is authorized to receive criminal
23 history record information that includes nonconviction data as defined
24 in RCW 10.97.030. The department may only disseminate nonconviction
25 data obtained under this section to criminal justice agencies. This
26 section does not apply to financial institutions regulated under
27 chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

28 (3) At the time of filing an application for a license under this
29 chapter, each loan originator applicant shall pay to the director the
30 appropriate application fee in an amount determined by rule of the
31 director in accordance with RCW 19.146.228 to cover the cost of
32 processing and reviewing the application. The director shall deposit
33 the moneys in the financial services regulation fund.

34 (4) The director must establish by rule procedures for accepting
35 and processing incomplete applications.

36 NEW SECTION. **Sec. 20.** A new section is added to chapter 19.146
37 RCW to read as follows:

1 (1) The director shall issue and deliver a loan originator license
2 if, after investigation, the director makes the following findings:

3 (a) The loan originator applicant has paid the required license
4 fees;

5 (b) The loan originator applicant has met the requirements of
6 section 19 of this act;

7 (c) The loan originator applicant has not had a license issued
8 under this chapter or any similar state statute suspended or revoked
9 within five years of the filing of the present application;

10 (d) The loan originator applicant has not been convicted of a gross
11 misdemeanor involving dishonesty or financial misconduct or a felony
12 within seven years of the filing of the present application;

13 (e) The loan originator applicant has passed a written examination
14 whose content shall be established by rule of the director;

15 (f) The loan originator applicant has not been found to be in
16 violation of this chapter or rules;

17 (g) The loan originator applicant has demonstrated character and
18 general fitness such as to command the confidence of the community and
19 to warrant a belief that the business will be operated honestly and
20 fairly within the purposes of this chapter; and

21 (h) The loan originator licensee has completed, during the calendar
22 year preceding a licensee's annual license renewal date, continuing
23 education as established by rule of the director. The director shall
24 establish standards in rule for approval of professional organizations
25 offering continuing education to loan originators. The director may
26 approve continuing education taken by loan originators in other states
27 if the director is satisfied that such continuing education meets the
28 requirements of the continuing education required by this chapter.

29 (2) If the director does not find the conditions of subsection (1)
30 of this section have been met, the director shall not issue the loan
31 originator license. The director shall notify the loan originator
32 applicant of the denial and return to the loan originator applicant any
33 remaining portion of the license fee that exceeds the department's
34 actual cost to investigate the license.

35 (3) The director shall issue a new loan originator license under
36 this chapter to any licensee that has a valid license and is otherwise
37 in compliance with this chapter.

1 (4) A loan originator license issued under this section expires on
2 the date one year from the date of issuance which, for license renewal
3 purposes, is also the renewal date. The director shall establish rules
4 regarding the loan originator license renewal process created under
5 this chapter.

6 (5) A loan originator licensee may surrender a license by
7 delivering to the director written notice of surrender, but the
8 surrender does not affect the loan originator licensee's civil or
9 criminal liability or any administrative actions arising from acts or
10 omissions occurring before such surrender.

11 (6) To prevent undue delay in the issuance of a loan originator
12 license and to facilitate the business of a loan originator, an interim
13 loan originator license with a fixed date of expiration may be issued
14 when the director determines that the loan originator has substantially
15 fulfilled the requirements for loan originator licensing as defined by
16 rule.

17 NEW SECTION. **Sec. 21.** A new section is added to chapter 19.146
18 RCW to read as follows:

19 A loan originator license, or the authority granted under such a
20 license, is not assignable and cannot be transferred, sold, or
21 franchised by contract or any other means.

22 NEW SECTION. **Sec. 22.** A new section is added to chapter 19.146
23 RCW to read as follows:

24 A loan originator may only take an application on behalf of one
25 mortgage broker at a time, and that mortgage broker must be clearly
26 identified on the application.

27 NEW SECTION. **Sec. 23.** The director of the department of financial
28 institutions or the director's designee may take such steps as are
29 necessary to ensure that this act is implemented on the effective date
30 of this section.

31 NEW SECTION. **Sec. 24.** This act takes effect January 1, 2007."

32 Correct the title.

EFFECT: Narrows the definition of "loan originator" excluding

persons who perform only administrative and clerical duties and do not hold themselves out as having the ability to obtain a loan. The cost of the retention of professionals and specialists to conduct or assist in conducting examinations for investigations only must be billed under RCW 19.146.228. The original bill provided that examinations were also billed under RCW 19.146.228. The department of financial institutions may take actions to ensure that the act can be implemented when it becomes effective.

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